

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Anish & Anita Keshwani,**  
Petitioners-Appellants,

v.

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 10-77-0108**  
**Parcel No. 291/00065-481-013**

On April 7, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants Anish and Anita Keshwani requested a hearing. They were self-represented. The Board of Review designated Assistant County Attorney Peter Blink as its legal representative. The Keshwanis submitted evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Anish and Anita Keshwani, owners of property located at 13931 South Shore Drive, Clive, Iowa, appeal from the Polk County Board of Review decision reassessing their property. According to the property record card, the subject property consists of a two-story dwelling having 1937 square feet of main level living area and 1905 square feet of upper level living area, for a total living area of 3842 square feet. It has a 1985 square-foot basement with 1440 square foot of finish and an 876 square-foot, three-car attached garage. The property is also improved by a 78 square-foot open porch, a 674 square-foot patio, and a 340 square-foot deck. The improvements were built in 1993. The dwelling has a 1+10 quality grade classification and is in normal condition. The improvements are situated on a 0.477 acre site in a subdivision known as Country Club.

The real estate was classified as residential on the initial assessment of January 1, 2010, and valued at \$631,300, representing \$121,100 in land value and \$510,200 in improvement value.

The Keshwanis protested to the Board of Review on the grounds that the assessment is not equitable under Iowa Code section 441.37(1)(a); the property is assessed for more than the value authorized by law under section 441.37(1)(b); there was an error in the assessment under section 441.37(1)(d); and that there has been a downward change in value under sections 441.37(1) and 441.35(3).

The Board of Review granted the protest, in part, stating, "The assessed value of this property was changed because there has been a change in value since the last reassessment." The assessment was reduced to \$599,800, representing \$121,100 in land value and \$478,700 in dwelling value.

The Keshwanis filed their appeal with this Board and urged the grounds of equity, over-assessment, and downward change in value. They claim \$524,300 is the actual value and fair assessment of the subject property. In their explanation, they reportedly over-paid for the property because of a family situation and urgency on their part to purchase the property. Because the 2010 value did not change from the previous year, and 2010 is an interim year, we consider only the change in value ground.

The Keshwanis submitted an opinion letter prepared by Realtor Liz Willis of Iowa Realty, West Des Moines. Willis reported a pending sale of a comparable property for \$467,900<sup>1</sup> that was 80 square-foot larger than the subject and had a similarly sized, walk-out basement with 160 more square feet of finish. Willis added the \$44,500 difference in assessment values between lake lots and off-lake lots to compensate for the subject property's superior lake lot to the pending price. Under her analysis, the Keshwanis' property's estimated value was \$512,400 as of June 13, 2010. This property was also identified as comparable sale 2 in the Raye appraisal and sold for \$450,000, \$17,900 less than the

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<sup>1</sup> Willis recognized it was highly possible the final sale price was less than the list price.

listing price used in Willis' analysis. Willis also identified a current listing of a comparable property at \$555,000, which has more basement finish.

Anita Keshwani testified they had not upgraded or renovated the house since purchasing it. The roof, windows, and furnace are 20 years old, and the home does not have new technology items such as a home theater. They received no explanation from the Board of Review for the \$100,000 increase in assessment from 2007 to 2009. She provided photographs to illustrate the interior and exterior condition of the subject property. We find Keshwani to be a truthful, credible and knowledgeable witness.

The Keshwanis submitted information on five nearby properties: three listings, one 2010 sale and one pending sale, for comparison to their property. The properties are all two-stories, with living areas from 3006 to 3922 square feet, all are lake-front lots, and most are walk-outs with similar amounts of basement finish built between 1989 and 1993. The unadjusted sale and list prices combined ranged from \$389,900 to \$600,000, or \$114.74 to \$161.73 per square foot. These properties have assessed values from \$343,600 to \$524,500<sup>2</sup>, or \$111.78 to \$133.73 per square foot. The subject property is assessed at \$599,800, or \$156.12 per square foot, higher than the assessed values and at the upper end of the sale and list prices of the compared properties. The figure below summarized this information:

Address	SF Living Area	Sale Date	Sale Price	Price per SF	2010 AV	AV per SF	Base, Finish
13851 Lakeview Dr	3066	Listing	\$389,900	\$127.17	\$343,600	\$ 112.07	None
1680 Cedarwood Cir	3591	Listing	\$595,000	\$165.69			1500
14130 Lakeshore Dr	3922	06/30/2010	\$450,000	\$114.74	\$524,500	\$ 133.73	1600
14050 Lakeview Dr	3629	12/01/2010	\$485,000	\$133.65	\$484,700	\$ 133.56	2012
14007 South Shore Dr	3710	Listing	\$600,000	\$161.73	\$414,700	\$ 111.78	1200
Subject	3842				\$599,800	\$ 156.12	1440

<sup>2</sup> This data excludes the assessed value of the property located at 1680 Cedar Circle because the assessment was not provided.

The record included a Board of Review appraiser analysis that had sales of four comparable properties and the sale of the subject property. Excluding the subject property, the unadjusted sale prices ranged from \$450,000 to \$622,000, or \$109.22 to \$148.93 per square foot. Adjusted sale prices were \$450,510 to \$647,842, or \$109.35 to \$200.79 per square foot. Assessed values of these properties range from \$447,500 to \$580,000, or \$108.62 to \$145.92 per square foot. The subject property is assessed at \$156.12 per square foot.

The Keshwanis also submitted a list of all twenty-six lake-front properties on South Shore and Lakeview Drives comparing their 2007/2008 and 2009/2010 assessments, as summarized below:

Lake Shore	Yr Built	SF Living Area	2007/2008 AV	2009/2010 AV	Change	AV per SF
13901	1994	3275	\$ 461,100	\$ 459,600	\$ (1,500)	\$ 140.35
13911	1993	3686	\$ 505,700	\$ 504,000	\$ (1,700)	\$ 136.73
13921	1993	3900	\$ 520,900	\$ 520,900		\$ 133.56
13931	1993	3842	\$ 524,300	\$ 599,800	\$ 75,500	\$ 156.12
13941	2005	6380	\$ 705,200	\$ 702,800	\$ (2,400)	\$ 110.16
13951	2006	5024	\$ 551,600	\$ 549,800	\$ (1,800)	\$ 109.44
13961	1993	3622	\$ 503,400	\$ 501,800	\$ (1,600)	\$ 138.54
13971	1994	3508	\$ 524,000	\$ 522,300	\$ (1,700)	\$ 148.89
13981	1994	3844	\$ 471,400	\$ 468,900	\$ (2,500)	\$ 121.98
14007	1993	3710	\$ 416,000	\$ 414,700	\$ (1,300)	\$ 111.78
14037	1993	3494	\$ 449,900	\$ 448,300	\$ (1,600)	\$ 128.31
14067	1992	3545	\$ 409,500	\$ 408,200	\$ (1,300)	\$ 115.15
14097	1994	4210	\$ 523,300	\$ 521,500	\$ (1,800)	\$ 123.87
14107	1993	3932	\$ 424,900	\$ 423,500	\$ (1,400)	\$ 107.71
14137	1993	3356	\$ 421,500	\$ 420,200	\$ (1,300)	\$ 125.21
14167	1992	2677	\$ 309,000	\$ 308,000	\$ (1,000)	\$ 115.05
Lakeview	Yr Built	SF Living Area	2007/2008 AV	2009/2010 AV	Change	AV per SF
14162	1993	3515	\$ 475,500	\$ 474,000	\$ (1,500)	\$ 134.85
14140	1993	3238	\$ 438,900	\$ 437,600	\$ (1,300)	\$ 135.15
14112	1993	3195	\$ 467,600	\$ 466,200	\$ (1,400)	\$ 145.92
14090	1996	3183	\$ 536,000	\$ 535,000	\$ (1,000)	\$ 168.08
14072	1992	3957	\$ 530,400	\$ 528,800	\$ (1,600)	\$ 133.64
14050	1991	3629	\$ 486,200	\$ 484,700	\$ (1,500)	\$ 133.56
14032	1991	3617	\$ 537,000	\$ 535,400	\$ (1,600)	\$ 148.02
14000	1991	3775	\$ 516,400	\$ 514,900	\$ (1,500)	\$ 136.40
13982	1992	3770	\$ 461,300	\$ 460,000	\$ (1,300)	\$ 124.32
13950	1992	3671	\$ 456,000	\$ 454,600	\$ (1,400)	\$ 123.84

Excluding the subject property which is highlighted in the chart and the property at 1391 Lake Shore, all property assessments decreased from their 2007/2008 assessment period to their 2009/2010 assessment period by \$1,000 to \$2,500 with a median reduction of \$1,500 per property.

They submitted another list of twenty-six properties on South Shore Drive, disregarding the lake frontage, and comparing their 2007/2008 assessments, with their 2009/2010 reassessments. While the lakefront properties are more similar to Keshwani's property, all the South Shore Drive property assessments showed a comparable pattern of a median reduction of \$1,300.

Applying the \$1500 median reduction comparable to the other South Shore lakefront properties to Keshwanis' 2007/2008 assessment of \$524,300 would result in a 2009/2010 assessed value of \$522,800. However, during the same time frame, the subject property's assessment rather than being reduced was increased by \$75,500.

Susan Raye of Iowa Appraisal & Research Company, Des Moines, completed an appraisal of the property for re-financing purposes with an effective date of October 14, 2010. She noted a downward change in value, reporting the average sale price in the Country Club subdivision had declined by 2.1% between 2008/2009 and 2009/2010 based on the average multiple list service sales data. Raye used five sales in the Country Club area, four that occurred in 2010 and one that occurred in 2009. She identified properties similar to the subject property in style, size, and location.<sup>6</sup> She adjusted for view, financing concessions, gross living area, condition, basement size and finish, heating/air conditioning, and other amenities. Unadjusted sale prices ranged from \$450,000 to \$910,000 with a median of \$500,000, or \$114.74 to \$358.55 per square foot with a median of \$151.70

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<sup>6</sup> Raye distinguishes comparable #4 which is dissimilar but provided to bracket the extreme upper limits of the value range for the area and exhibit a sale with lake frontage.

per square foot. Adjusted sale prices ranged from \$450,000 to \$500,000. Raye estimates a value for the subject property of \$510,000.

It is clear from the wording of section 441.21(1)(b) that a sales price for the subject property in a normal transaction just as a sales price of comparable property, is a matter to be considered in arriving at market value but does not conclusively establish that value. *Riley v. Iowa City Board of Review*, 549 N.W.2d 289, 290 (Iowa 1996). A sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for. *Id.* There is no indication that it was an abnormal transaction at the time of purchase, however, Keshwanis assert their 2007 purchase price of the subject property may have been over-market.

Comparing the \$700,000 purchase price, albeit dated, to the \$510,000 value opinion in the Raye appraisal, the Willis estimated value of \$512,400, and multiple listing service data indicating a 2.1% decline in the average County Club subdivision sale price between 2008/2009 and 2009/2010; it is clear the subject property's value has declined. The assessor's reduction in the Country Club 2010 assessed values is further evidence property values in the area have declined. The Board of Review decision recognized the downward change in Keshwanis' property value since the last reassessment. Although the Keshwanis have the burden of proof, the assessor's office was unable to explain to them the reason for the \$75,000 increase in their assessment. Nor did it provide exhibits or testimony at hearing to explain the reason for the increase to this Board when comparable properties' assessments decreased. While there is insufficient evidence in the record to support a finding of discriminatory treatment or selective reassessment<sup>7</sup> of the subject property, it is concerning that no explanation was provided to the property owners or to this Board.

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<sup>7</sup> Selective reassessment has been found by the U.S. Supreme Court to be a violation of the equal protection clause of the Constitution. *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336, 109 S.Ct. 633 (1989).

Reviewing all the evidence, we agree with the Board of Review that there has been a change in value of the subject property since the last reassessment. However, we do not agree with the amount of reduction. It is clear to this Board that Keshwanis' reduction was not consistent with the reduced assessments of other properties in the immediate area. We find the preponderance of the evidence supports the Keshwanis' contention there has been a downward change in their property's value. We considered the Raye appraisal, which is closely aligned with the Willis value opinion, to be the most credible evidence of the fair market value and a fair assessment of the subject property on the January 1, 2010, assessment date.

### *Conclusion of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or

comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, “other factors” may be considered in arriving at market value. § 441.21(2). The assessed value of the property “shall be one hundred percent of its actual value.” § 441.21(1)(a).

In a non-reassessment or “interim” year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). The last unnumbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of downward trend in value. For a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1977). The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451. Keshwanis’ evidence showed a decline in property values for their property since purchase, other area properties since the last reassessment, and for the subdivision as a whole based on average multiple list service sales data.

We find a preponderance of the evidence proves there has been a change in the value of Keshwanis’ property since the last reassessment. The Raye appraisal is the most persuasive evidence of the change in market value of the property and supports the decision of this Board.

THE APPEAL BOARD ORDERS that the January 1, 2010, assessment as determined by the Polk County Board of Review is modified to \$522,800, representing \$121,100 in land value and \$401,700 in dwelling value.



The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 11 day of August 2011.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer  
Richard Stradley  
Richard Stradley, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8-11</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>